

Where retailers send merchandise to party hostesses who then distribute the merchandise to purchasers, shipping and handling charges are considered part of the retailer's costs of doing business and are subject to tax. See 86 Ill. Adm. Code 130.410. (This is a GIL).

April 1, 2002

Dear Xxxxx:

This letter is in response to your letter dated February 5, 2002 that we received on February 22, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

It has been quite awhile since I talked with you regarding the charging of sales tax on shipping and handling. Unfortunately I had a death in the family which delayed my pursuit of this issue. Hopefully you will recall our discussion.

I have enclosed the Order Form and the note I received from PERSON, a local distributor. I contacted NAME, who is PERSON's contact. She indicated that the audit division of the Ill. Dept. of Revenue mandates that they charge sales tax on shipping and handling. Clearly when you review the forms, this is a separate and distinct item on the order form, not included in the selling price. The host, in this case it would have been myself, has the option of having everything shipped to her house for distribution, or other arrangements and available to ship directly to the customer. At your suggestion, I read Part 130.415 of Title 86, and still believe that no sales tax should be charged on the shipping and handling since it is a separate charge.

I would appreciate any clarification you might be able to provide. Thank you for your assistance.

As a technical proposition, handling charges represent a retailer's cost of doing business, and are consequently always includable in gross charges subject to tax. See, 86 Ill. Adm. Code 130.410, enclosed. However, such charges are often stated in combination with shipping charges. In this case, charges designated as "shipping and handling," or transportation charges in general, are not taxable if it can be shown that they are both separately contracted for and that such charges are actually reflective of the costs of shipping. To the extent that shipping and handling charges exceed the costs of shipping, the excess charges are subject to tax.

Whether shipping and handling charges may be deducted by retailers in calculating Retailers' Occupation Tax liability depends not upon the separate billing of such shipping and handling as a separate charge, but upon whether the charges are included in the selling prices of the property or

are contracted for separately by purchasers and retailers. The best evidence that shipping charges were agreed to separately and apart from selling prices, are separate and distinct contracts for shipping. Alternatively, documentation in the records of sellers that purchasers had options of taking delivery of the property at sellers' locations, for the agreed purchase prices, or having delivery made by sellers for the agreed purchase prices plus ascertainable delivery charges, may suffice. If the purchaser separately contracts for delivery of merchandise, either to the purchaser's address or to another address or addresses, the charges for shipping and handling may be deducted in determining the retailer's Retailers' Occupation Tax liability.

Please be advised that where retailers send merchandise to party hosts or hostesses who then distribute the merchandise to purchasers, shipping and handling charges are generally considered part of the retailer's costs of doing business and are subject to tax. Please refer to Section 130.410.

Although you refer in your letter to an option of shipping directly to the customer, we could not discern this from the documents you enclosed with your correspondence. The 2001 holiday product catalogue makes no mention of this option. The order forms you appended to your letter do not indicate that the customer has an option of ordering outside of a show with shipment to their home address. What both order forms do contain is a set charge for shipping and handling, depending upon the amount of the order. Such charges are not the subject of a separate contract for delivery of the merchandise and are subject to tax.

However, if purchasers were actually to have the option of ordering directly from COMPANY, then the shipping and handling charges would be treated as mail order shipping and handling charges. Mail order delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the mail order form requires a separate charge for delivery and so long as the charges designated as shipping and handling are actually reflective of the costs of such shipping, transportation or delivery. To the extent that such charges exceed the costs of shipping, transportation or delivery, the excess charges are subject to tax. See Section 130.415(d).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

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Enc.